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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re :  
: Chapter 11  
SEARS HOLDINGS CORPORATION, *et al.*, :  
: Case No. 18-23538 (RDD)  
: (Jointly Administered)  
Debtors. :  
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**OBJECTION OF GLP US MANAGEMENT LLC AND CERTAIN LANDLORDS  
TO DEBTORS' NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION  
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES IN CONNECTION WITH GLOBAL SALE TRANSACTION**

GLP US Management LLC ("GLP"), as managing agent for and together with (i) Icon Owner Pool 4 Northeast/Midwest, LLC, (ii) Western B Southeast FL, LLC, (iii) Icon Owner Pool 1 West/Southwest, LLC, (iv) Icon Owner Pool 1 SF Non-Business Parks, LLC, (v) Icon DP MD Owner Pool 2 West/Northeast/Midwest, LLC, and (vi) Icon Owner Pool 1 SF Business Parks, LLC (collectively, the "Landlords") by and through their undersigned counsel, hereby file this objection (the "Objection") to the *Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in connection with Global Sale Transaction* (ECF No. 1774) (the "TH Assumption Notice,"), filed by the above-captioned Debtors

(collectively, the “Debtors”).<sup>1</sup> In support thereof, GLP and the Landlords respectfully state as follows:

### **STATEMENT OF OBJECTION**

1. On November 3, 2018, the Debtors filed the *Motion of Debtors for Entry of Order (i)(A) Approving Bidding Procedures for Sale of Sears Home Improvement Business (B) Approving Stalking Horse Bid Protections, (C) Scheduling Auction for and Hearing to Approve Sale of Sears Home Improvement Business, (D) Approving Form and Manner of Notice of Sale, Auction, and Sale Hearing, (E) Approving Assumption and Assignment Procedures, (ii) Approving the Sale of Sears Home Improvement Business in Accordance with the Stalking Horse Agreement, and (iii) Granting Related Relief* (ECF No. 450) (the “SHIP Business Motion”).

2. On November 27, 2018, the Debtors filed that certain Notice of Assumption and Assignment (the “SHIP Assumption Notice”) in connection with the intended sale of Sears Home Improvement Business (the “SHIP Sale”).

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SRC Sparrow 1 LLC (None); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); SRC Sparrow 2 LLC (None); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); SRC O.P. LLC (None); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); SRC Facilities LLC (None); and SRC Real Estate (TX), LLC (None). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

3. The SHIP Assumption Notice identified a lease between Sears Home Improvement Products, Inc. and Icon Owner Pool 1 SF Business Parks, LLC (“IOP1SF”) at 283 East Airway Blvd, Livermore, CA 94551 (the “Livermore Lease”) as one of the unexpired leases to be assumed and assigned to Service.com and set forth a proposed cure amount of \$0. IOP1SF filed a limited objection noting a discrepancy in the cure amount and limitations pending expiration of term under the Livermore Lease.<sup>2</sup>

4. On November 19, 2018, the Court entered the *Order Approving Global Bidding Procedures and Granting Related Relief* (ECF No. 816), which contemplates a process for the assumption of certain executory contracts and unexpired leases.

5. On January 18, 2019, the Debtors filed a Notice of Successful Bidder and Sale Hearing (ECF No. 1730), stating that Transform Holdco, LLC, an affiliate of ESL Investments, LLC, was the successful bidder (the “TH Purchaser”) for the Global Assets (as defined therein).

6. On January 18, 2019, the Debtors filed a first assumption notice, which did not list any of the leases associated with GLP or the Landlords.

7. Thereafter, on January 23, 2019, the Debtors filed the TH Assumption Notice, which lists a number of additional executory contracts and leases that the Debtors assert are subject to possible assumption and assignment to the TH Purchaser in connection with the sale.

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<sup>2</sup> Upon information and belief, the Debtors have not provided specific notice to IOP1SF of the apparent termination of the SHIP Sale with Service.com. However, it now appears from recent filings by Service.com that the SHIP Sale has been terminated.

8. The TH Assumption Notice identify several leases<sup>3</sup> of the Landlords on:

- (a) Exhibit A-1, Page 13: Line 281 - Master Lease with “Icon DP MD Owner Pool 2 W/NE/MW” with a proposed cure amount of \$0.
- (b) Exhibit B-1, Page 1: Line 2 - Master Lease with “Icon Owner Pool 4 Northeast/Midwest LLC (GLP US)” with a proposed cure amount of \$213,879.90.
- (c) Exhibit B-1, Page 13: Line 358 - Master Lease with “Icon Owner Pool 1 West/Southwest LLC (GLP US)” with a proposed cure amount of \$24,501.52.
- (d) Exhibit B-1, Page 13: Line 366 - Master Lease with “Western B Southeast FL, LLC (GLP US)” with a proposed cure amount of \$48,174.98.
- (e) Exhibit B-1, Page 14: Line 393 - Master Lease with “Icon Owner Pool 1 SF Non-Bus Parks LLC (GLP US)” with a proposed cure amount of \$28,953.60.

9. GLP and the Landlords are not clear of the method of calculation of the identified cure amounts and request an opportunity to discuss the same with the Debtors. For example, it is not apparent to GLP or the Landlords whether the Debtors are attempting to include an estimate for proportionate share of operating expenses due under the respective leases or other charges that are typically reconciled on an annual basis.

10. Based upon an initial, but continuing review of these accounts, the only lease identified on the TH Assumption Notice that appears to understate a cure amount is the lease by Icon DP MD Owner Pool 2 West/Northeast/Midwest, LLC (“IDPMD”) (identified at ¶ 8.(a) above). IDPMD calculates a current cure amount of not less than \$3,793.92 on account of utilities from September, 2018 which were billed during mid-January, 2019.

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<sup>3</sup> For the avoidance of doubt, the TH Assumption Notice is silent as to the Livermore Lease with IOP1SF, though it was previously subject to the SHIP Assumption Notice.

11. The foregoing identified cure amounts due Landlords are subject to further adjustment and reconciliation depending upon the effective date of assumption that is anticipated by the Debtors, which timing was not specified in the TH Assumption Notice. The leasehold obligations due by the Debtors to Landlords include various traditional costs and charges which are reconciled on an annual basis. In assessing the current stated cure amounts, GLP and the Landlords have attempted to estimate the future reconciled amount of obligations due by the Debtors, but these are merely estimated values at this point in time. GLP and the Landlords therefore reserve the right to amend this Objection.

12. To date, Landlords have not been provided adequate assurance information by the Debtors that it deems sufficient to conclude that the assignment and assumption of the subject leases is appropriate. All rights and arguments of GLP and the Landlords in connection with adequate assurance are reserved pending further review. *See* 11 U.S.C. § 365(b)(1).

13. Accordingly, GLP and the Landlords object to the TH Assumption Notice as it relates to GLP and the Landlords and any related motion<sup>4</sup> and to the entry of any Order approving the assumption or assignment of any lease between Debtors and GLP or the Landlords without further clarification of amounts due GLP or the Landlords.

**WHEREFORE**, GLP and the Landlords:

- (A) object to the cure amounts set forth on the TH Assumption Notice as set forth herein;
- (B) objects to the entry of any Order assuming or assigning any subject lease between Landlords and Debtors at this time without further clarification of amounts due;
- (C) objects that insufficient adequate assurance has been provided; and

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<sup>4</sup> GLP and the Landlords do not object to sale itself, only to the impact of the sale proceedings on the subject leases.

(C) requests the Court award it such other and further relief as the Court deems just and proper.

Dated: New York, New York  
January 31, 2019

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